



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
CARIBBEAN ENVIRONMENTAL PROTECTION DIVISION
CITY VIEW PLAZA II, SUITE 7000
GUAYNABO, PUERTO RICO 00968-8069

0 3 2 7 1 7

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. Reynaldo Vincenty
President
Caribbean Management Group, Inc.
P.O. Box 141475
Arecibo, PR 00614

**Re: Request for Information Pursuant to Section 308 of the Clean Water Act
Christopher Columbus Landing Development
2012 CGP Tracking Number PRR12A438
CEPD-CWA-02-IR-2017-024**

Dear Mr. Vincenty:

This letter serves to request information as a result of the Reconnaissance Inspection ("Inspection") conducted on December 6, 2016, and further investigations performed by Jaime López, Enforcement Officer ("EPA Inspector"), of the United States Environmental Protection Agency's ("EPA") Caribbean Environmental Protection Division ("CEPD"). The Inspection was performed at the Christopher Columbus Landing Development (the "Project"), which is located at Road PR-107, Km. 2.2, Borinquen Ward, Aguadilla, Puerto Rico.

Statutory and Regulatory Provisions, and NPDES Permitting

Section 301(a) of the CWA provides in part that except as in compliance with Section 402 of the CWA, the discharge of any pollutant by any person shall be unlawful. Section 402(p) of the CWA requires a NPDES permit with respect to a storm water discharge associated with industrial activity. Pursuant to the NPDES regulations at 40 C.F.R. §§ 122.26(a)(1)(ii) and 122.26(b)(14)(x), operators are required to obtain a NPDES permit for storm water discharges associated with construction activity. Storm water associated with construction activity means the discharge of storm water from construction activities including clearing, grading and excavation that result in land disturbance of equal to or greater than 5 acres.

On February 16, 2012, EPA issued and published the "2012 NPDES General Permit for Discharges from Construction Activities" (2012 CGP) in the Federal Register (77 Fed. Reg. 12,286). The 2012 CGP became effective on February 16, 2012 and expired on February 16, 2017. The Permit established among others, Notice of Intent ("NOI" or "eNOI") requirements, development of a Storm Water Pollution Prevention Plan ("SWPPP"), performance of inspections, completion of inspection reports, and included other conditions and requirements.

Part 1.4 of the 2012 CGP indicated that the operator seeking coverage under the 2012 CGP must submit to EPA a complete and accurate NOI prior to commencing construction activities. Part 1.4.2 and Table 1 of the 2012 CGP required operators of new projects to file a NOI to obtain coverage under the 2012 CGP at least fourteen days (14) days prior to commencing earth disturbing activities. Part 1.11.1 of the 2012 CGP indicated that the NOI must be signed by a responsible corporate officer in the case of a corporation. Parts 1.4 and 7.1.1 of the 2012 CGP required operators associated with a construction project to be covered under the 2012 CGP to develop a SWPPP prior to submitting a NOI for coverage under the 2012 CGP.

Part 1.4.4. of the 2012 CGP (Continuation of Coverage for Existing Permittees After the Permit Expires) indicated that if the 2012 CGP is not reissued or replaced prior to the expiration date, it will be administratively continued in accordance with the Administrative Procedure Act, and will remain in force and effect for discharges that were covered prior to expiration.¹ If permit coverage was granted prior to the expiration date, the permittee will automatically remain covered by the 2012 CGP until, among others situations, authorization for coverage under a reissued or replacement version of the 2012 CGP permit following the timely submittal of a complete and accurate NOI requesting coverage under the new permit. When a permittee fails to submit a timely NOI for coverage under the reissued or replacement permit, coverage under the 2012 CGP will terminate on the date that the NOI was due.

Inspection and Review of Records

On November 15, 2016, the EPA Inspector reviewed the EPA NOI Processing Center Database. The EPA Inspector found that a company named Caribbean Management Group, Inc. filed an electronic NOI for coverage under the 2012 CGP on May 19, 2013. Also, the EPA Inspector found that CMG has not submitted a Notice of Termination for the Project.

On December 6, 2016, the EPA Inspector performed the Inspection of the Project to determine compliance with Sections 301(a), 308(a) and 402(p) of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1311(a), 1318(a) and 1342(p), the National Pollutant Discharge Elimination System (NPDES) stormwater permit application regulations codified in 40 C.F.R. §§ 122.21, 122.26 and 122.28, and the 2012 CGP. Enclosed please find a copy of the Water Compliance Inspection Report, dated March 6, 2017, which includes the findings and observations concerning the Inspection and further reviews of information provided by CMG.

Request for Information ("RFI")

As a result of the EPA Inspector review of records, the findings of the Inspection and a follow-up meeting with a CMG representative, EPA issues this Request for Information ("RFI") to Caribbean Management Group, Inc. (CMG) pursuant to the authority vested in the Administrator of EPA by Section 308(a) of the CWA, 33 U.S.C. § 1318(a). This authority has been duly delegated to the Regional Administrator of Region 2, EPA, and since further re-delegated to the Director, Caribbean Environmental Protection Division. The purpose of this RFI is to require CMG to submit information to EPA regarding the construction of the Project. The information

¹ The NPDES General Permit for Discharges from Construction Activities was re-issued on January 11, 2017 (2017 CGP). The 2017 CGP became effective on February 16, 2017, and expires on February 16, 2022.

requested below will be used to determine compliance with Sections 301(a), 308(a), and 402(p) of the CWA.

Section 308(a) of the CWA, 33 U.S.C. § 1318(a), provides that whenever it is necessary to carry out the objectives of the CWA, including determining whether or not a person is in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), EPA shall require the submission of any information reasonably necessary to make such a determination. Under the authority of Section 308 of the CWA, EPA may require the submission of information necessary to assess the compliance status of any construction site and its related activities. In this instance, the construction site being assessed is the Project.

RFI – Instructions

In responding to this Request for Information, apply the following instructions, definitions and information:

- a. The signatory should be an officer or agent who is authorized to respond on behalf of CMG pursuant to the signatory requirements regulations codified at 40 C.F.R. § 122.22.
- b. A complete separate response must be made to each individual question in this Request for Information. Identify each answer with the number of the question to which it is addressed and precede each answer with the question to which it is addressed.
- c. Interpret "and" as well as "or" to include within the scope of the question as much information as possible. If two interpretations of a question are possible, use the one that provides more information.
- d. In preparing your response to each question, consult with all present and former employees, agents and/or contractors whom you have reason to believe may be familiar with the matter to which the question pertains, regardless of whether the source is in your immediate possession.
- e. In answering each question, identify all contributing sources of information.
- f. If you are unable to answer a question in a detailed and complete manner or if you are unable to provide any of the information or documents requested, indicate the reason for your inability to do so. If you have reason to believe that there is an individual who may be able to provide more detail or documentation in response to any question, state that person's name and last known address and phone number and the reasons for your belief.
- g. If anything is deleted from a document produced in response to this Request for Information, state the reason for and the subject matter of the deletion.

- h. For each document produced in response to this Request for Information, indicate on the document or in some other reasonable manner, the number of the question to which it applies. If a document is requested but is not available, state the reason for its unavailability.
- i. For the definition of "Water of the United States" and "Point Source", see 40 C.F.R. § 122.2.
- j. When referring to the construction of the Project, CMG shall include all those activities that involved earth movement activities within the property and its access road.

RFI – Documents and Information Requested

Pursuant to Section 308(a) of the CWA, a written response to the information requested below shall be sent to EPA:

1. a detailed description of the property where the construction activities for the Project took place, and a copy of the property deed;
2. the name of the owner or owners of the property where the Project is being constructed, their addresses, phone numbers and officers;
3. the names of the corporations, businesses or individuals that are engaged in developing the Project. Include the names of the officers, executive directors and agents, their addresses and phone numbers;
4. the names of all contractors, past and present that engaged in clearing, grading and/or excavation activities during the construction of the Project. Include a description of their activities during the construction of the Project, and the addresses, phone numbers and officers;
5. a copy of the construction contract between the development companies and construction companies engaged in the construction of the Project;
6. a detailed description of the construction of the Project;
7. indicate the exact date when earth movement activities began for the construction of the Project;
8. indicate the periods of time (beginning and end) when earth movement activities (i.e. clearing, grading, excavation) took place since the first date that earth movement activities began at the Project² Provide a copy of the construction log book for the

² During the March 1, 2017 meeting between Mr. José de Jesús, CMG's Project Manager, and the EPA Inspector, Mr. De Jesús stated that CMG commenced and ceased construction activities at the Project on two occasions. The first occasion was between September 1, 2016 and November 28, 2016, and the second occasion was between February 12 and February 23, 2017.

periods in which earth movement activities were conducted;

9. indicate the last date that earth movement activities were conducted at the Project;
10. indicate the acres of soil that were disturbed until the last date that that earth movement activities were conducted at the Project;
11. indicate the acres of soil that are expected to be disturbed during the construction of the Project;
12. a copy of all storm sewers or storm water collection system drawings and specifications for the Project;
13. color copy of all available aerial photographs taken during the construction of the Project;
14. the approximate number of construction employees of the companies involved in the construction of the Project;
15. a detailed description of how storm water is being managed and disposed of during the construction of the Project;
16. provide a copy of all Hydrologic and Hydrology studies prepared for the Project;
17. provide a detailed explanation of the storm water runoff path after leaving the Project construction premises, and the receiving waters which receive the discharges from the construction of the Project;
18. indicate in a site map, the areas of the Project impacted by the construction, the areas in which temporary stabilization was applied, and the areas pending final stabilization. Also, indicate the materials used for soil stabilization during the construction of the Project. In response to this request, refer to Appendix A of the 2012 CGP for the definition of final stabilization;
19. a copy of the electronic NOI that CMG filed for the Project. Include a copy of any other communication concerning the NOI;
20. a copy of the supporting documentation to satisfy the eligibility requirements of the 2012 CGP with respect to the protection of species that are federally-listed as endangered or threatened under the Endangered Species Act (ESA) or federally-designated critical habitat. In response to this request, refer to Part 1.1 and Appendix D of the 2012 CGP;
21. a copy of the supporting documentation to satisfy the eligibility requirements of the 2012 CGP with respect to screening process for the protection of historic properties and places. In response to this request, refer to Part 1.1 and Appendix E of the 2012

CGP;

22. a copy of the NOI(s) that the construction company(ies) / construction operator(s) filed for the construction of the Project;³
23. a copy of the SWPPP(s) developed for the construction of the Project, including a legible site plan. In response to this request, refer to Part 7 of the Permit; and
24. a copy of all site inspection reports that were prepared during the construction of the Project. Indicate the name(s) of the individuals that performed the site inspections and their qualifications to conduct the inspections.⁴ In response to this request, refer to Part 4.1 of the 2012 CGP.

In addition, please indicate whether an electronic NOI has been filed for the Project under the requirements of the 2017 CGP. If the NOI was filed, provide the following information:

- the date when earth movement activities are expected to re-start at the Project;
- the names of all contractors that will be engaged in clearing, grading and/or excavation activities. Include a description of their activities during the construction of the Project, and the addresses, phone numbers and officers;
- a copy of an updated SWPPP for the Project;
- a copy of the supporting documentation to satisfy the eligibility requirements of the 2017 CGP with respect to the protection of species that are federally-listed as endangered or threatened under the Endangered Species Act (ESA) or federally-designated critical habitat. In response to this request, refer to Part 1.1 and Appendix D of the 2017 CGP; and
- a copy of the supporting documentation to satisfy the eligibility requirements of the 2017 CGP with respect to screening process for the protection of historic properties and places. In response to this request, refer to Part 1.1 and Appendix E of the 2017 CGP.

RFI – Time and Delivery of Documents and Information

The response to this RFI shall be postmarked or received at EPA within thirty (30) calendar days of receipt of this letter, and should be mailed to the following address:

³ See Appendix A of the Permit for the definition of “operator”.

⁴ Part 4.1.1 of the 2012 CGP defines the term “qualified person,” as a person knowledgeable in the principles and practice of erosion and sediment controls and pollution prevention, who possesses the skills to assess conditions at the construction site that could impact stormwater quality, and the skills to assess the effectiveness of any stormwater controls selected and installed to meet the requirements of the 2012 CGP.

Team Leader
Clean Water Act Team
Multimedia Permits and Compliance Branch
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency, Region 2
City View Plaza II - Suite 7000
#48, PR-165, Km 1.2
Guaynabo, Puerto Rico 00968-8069

Your response shall include the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Failure to comply in all respects with this Request for Information within the time specified above may result in the initiation of an enforcement action under Section 309 of the Act, 33 U.S.C. §1319, under which injunctive relief and penalties may be sought. Such an enforcement action may include the assessment of penalties of up to \$52,414 per day for each day of continued non-compliance.

Please be advised that you are under a continuing obligation to supplement the response if information not known or not available to you as of the date of submission of your response should later become known or available to you. In this instance, you must supplement your response to EPA within five (5) business days.

If at any time in the future you obtain or become aware of additional information or find that any portion of the submitted information is false, misleading or misrepresents the truth, you must notify EPA of this fact immediately and provide a corrected response within five (5) business days. If any part of the response is found to be untrue, you may be subject to criminal prosecution.

This Request for Information is not subject to the approval requirements of the Paperwork Reduction Act of 1980, 44 U.S.C. §§ 3501-3520. You may, if you so desire, assert a business confidentiality claim covering all or part of the information requested by this letter. A business confidentiality claim may be asserted by placing on (or attaching to) the information, at the time it is submitted, a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as "trade secret" or "proprietary" or "company confidential." Information covered by such a claim will be disclosed by EPA only in accordance with and by means of procedures set forth in Sub-part B, 40 C.F.R. Part 2.

If no such claim accompanies the information contained in the response to the attached Request for Information when it is received by EPA, it may be made available to the public by EPA without further notice to you. You should read the above-cited statutory and regulatory provisions carefully before asserting a business confidentiality claim, since certain categories of information are not properly the subject of such a claim. Allegedly confidential portions of otherwise non-confidential documents should be clearly identified by you. If you desire confidential treatment of information only until a certain date or until the occurrence of a certain event, your response should state so.

If you have any questions concerning this request, please contact Mr. Jaime Lopez at (787) 977-5851, or through electronic mail at "lopez.jaime@epa.gov."

Sincerely,

A handwritten signature in dark ink, appearing to read 'CYP' or similar, with a stylized flourish at the end.

Carmen R. Guerrero-Pérez

Director

Caribbean Environmental Protection Division

cc: Ángel Meléndez, EQB (via e/mail)